

**GOVERNOR'S COMMISSION ON
MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

**REPORT TO THE GOVERNOR AND
LEGISLATIVE COUNCIL**

MARCH 1, 2006

(Submitted pursuant to IC 4-13-16.5-2 (f) 8)

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INCREASING PARTICIPATION BY REMOVING BARRIERS

In November, IDOA announced a new M/WBE Construction Policy. Starting January 1, 2005, bid specifications will require responsive bidders to meet the M/WBE subcontracting goals or exhibit specific best efforts to meet the goals on State construction solicitations over \$150,000 that have subcontracting opportunities. Those who fail to meet the goal or receive an approved waiver will be deemed nonresponsive and their bid will not be considered. The Commission requested that particular attention be given to waivers requests from prime contractors that indicate that MWBE's prices are not competitive. This concern can be used as a false indicator and the Division will give special care when reviewing such claims.

The Minority and Women's Business Enterprise Division is continuing to work closely with the Indiana Stadium project. In November, the Division hosted outreach meetings in Indianapolis and East Chicago to highlight construction bid packages released at the time. We have also developed a mentor-protégé program that certified firms will be permitted to use without risk to their certification status. The mentor-protégé program is not mandatory but is a tool primes can use to help meet participation levels.

Chairman Kirkland met with Ronald Langston, President Bush's appointee as the National Director of the Minority Business Development Agency. Mr. Langston is planning a trip to Indianapolis, possibly a commission meeting, to discuss opportunities for minority and women business enterprise (M/WBE) participation in federal contracts as well as possible federal funding for Indiana minority and women's business enterprises.

Chairman Kirkland also met with the Ambassador to Ghana who is interested in bringing M/WBE business to Africa. He is interested in attending a commission meeting to see what the market might be for Indiana minority and women's business enterprises.

In December, the Commission and the audience had the opportunity to hear Sam Cornelius, former Minority Business Advisor to President Reagan and consultant on minority business, speak on his experiences. Mr. Cornelius stated that minority business is big business. He commented that small businesses should be granted the same access to funding as large corporations. This is why he is working in Washington D.C. to create a loan guarantee program to help get startup capital for small businesses. Chairman Kirkland added that Sam Cornelius is a pioneer for minority business and paved the way for the Division.

The Indiana Business Diversity Council (IBDC) and IDOA signed an MOU in January that will enable the state to better implement Executive Order 05-11. The Division is currently waiting for the IBDC to provide a list of firms to be included for certification. Firms with a negative certification history with the Division and those which did not receive a site visit from the IBDC will not be accepted.

MARKETING AND COMMUNICATION

The Division has embarked on a multi-audience campaign to better educate the entire stakeholder community about ways to be successful in attaining MBE and WBE goals. Throughout this quarter and moving into next year, Claudia Cummings is meeting with top level management at State agencies to help them meet their goals.

From the agency meetings and other sources, we are identifying a number of industries where certified MBE and WBE firms do not exist but could be engaged in State contracts if they did. In an effort to assist the state in meeting a greater portion of its participation goals, we are reviewing the specific needs of individual agencies and forging ahead on an aggressive campaign to recruit new firms or the expansion of current firms to meet the subcontracting needs.

The Division contributed to the Entrepreneur's Guide published by the Secretary of State's Office. The guide is comprehensive document that guides new business owners in establishing their business.

On February 8, the Division held a Business Diversity Series event entitled "Power Networking" at the Indiana Government Center. The centerpiece of the event was targeted networking between MWBEs and purchasers from both agencies and prime contractors. Workshops were also offered. Topics included obtaining bonding for construction projects through the SBA, MWBE audit expectations for prime contractors, and techniques for navigating the state's procurement and construction contracting processes. More than 350 people attended. As with the matchmaking event in July, the staff scored an exceptional evaluation of 9 for professionalism, and the event format received an 8.5. However, with regard to successful matches, there is still an opportunity for improvement with an average score of 7.5. Overall comments received indicate that these more targeted formats are an immense improvement over the Road Shows of the past. The Division will continue with this format.

Indiana University is recruiting new MWBEs to supply goods and services. These firms attend certification seminars hosted by IU where the Division provides training along with other certifying bodies. In February, the event was attended by 35 firms. The next training being held in May is already filled to capacity with another 35 firms. Purdue hosted a dinner for Purdue purchasers and MWBEs.

The Division co-hosted an event for over 150 with NAWBO, the City of Indianapolis and the Indianapolis Airport to discuss contracting opportunities. Claudia Cummings met with a statewide audience of over 150 members of INARF (the Indiana Association of Rehabilitative Facilities) on January 19 to discuss MWBE procedures with regard to non-profit organizations and the exemption for the State Use Program from MWBE subcontracting requirements. The State Use Program utilizes disabled individuals to provide goods and services to State agencies. Cummings was also a guest lecturer on

certification law at the Indiana University School of Law in Indianapolis. Other events attended by the Division include:

- Southeastern Indiana Small Business Development Council Conference
- Southern Indiana Small Business Development Conference
- Breakfast hosted by the City of Indianapolis for Latino Business Leaders from Chicago
- Northwest Indiana Minority Business Opportunity Committee Certification Assistance Day
- Indiana Black Legislative Caucus Prayer Breakfast
- Indiana Hispanic Chamber of Commerce Breakfast
- The Friday Group
- National Association of Women Business Owners Annual Luncheon
- Pre-Proposal meetings and Pre-Bid meetings for most state projects across the state.
- Two outreach events for the French Lick casino project
- The annual casino vendor trade fair
- The Indiana Construction Roundtable
- The SBA's Minority Enterprise Development Week (MED)
- The Northwest Indiana Minority Business Opportunity Council (NIMBOC) Wheel of Opportunity event.

INCREASING CAPACITY AND CERTIFICATION

On October 17, the revisions to 25 IAC 5 became effective. These new MWBE regulations removed many barriers to certification and increased the Division's ability to fight fraud. Key provisions include:

- Creation of the regulatory framework for the implementation of Executive Order 5-11 — the acceptance of other organizations' certifications for state contracts. The full implementation is expected to begin as soon as the Indiana Business Diversity Council provides IDOA with their list of certified firms.
- Elimination of the requirement that a business owner work on-site full time, recognizing that, in this age of cell phones and email, an owner can control a business while working on other endeavors.
- Elimination of the requirement that a business exist for two years before becoming eligible for certification.
- Allows business owners to hire experts to manage certain areas of the business, but continues to require that the owner controls the enterprise and oversees the vision of the organization.
- Allows IDOA to more easily remove firms from the program if it learns that the business is not eligible for certification.

State regulations require that MBE and WBE firms submit an annual affidavit attesting to their continued eligibility for the program. This is a valuable tool to ensure the integrity of the program. For the first time in recent years, the Division requested that firms submit this affidavit. Several notices were sent to remind business owners of the responsibility. The project resulted in the removal of about 100 firms from eligibility due to their nonresponsiveness. Many client records were also updated to reflect current status, and some had significant changes that resulted in an updated site visit and certification.

The Disadvantaged Business Enterprises (DBE) certification program was moved to the Indiana Department of Transportation (INDOT) in October. The transfer will unite DBE certification with other program facets such as contracting and compliance. IDOA transferred all open and pending DBE files to INDOT for certification determinations and monitoring.

The Division began collaborations with the Indiana Commission for Women and the Small Business Development Centers. The ICW will provide assistance with promoting the Division's training and networking opportunities in communities outside of Indianapolis. The Division trained SBDC staff to assist MWBE firms with certification application submissions. In the past, many different organizations were enlisted to assist with applications throughout the state. However, it is difficult to maintain consistent,

high-quality assistance across many unrelated and decentralized organizations. With the exception of the SBDC, all other organizations have been asked to discontinue the application assistance. The SBDC is a State organization with 11 regional offices located across the state. Through the quarterly meetings, the Division will provide continuing education to the SBDC to ensure that quality and accurate assistance is given to firms seeking their assistance across the state with regard to certification applications.

Delays in certification and some negative determinations result when applicants submit incorrect or incomplete information with their application. The Division has introduced a service to assist applicants in completing their certification applications. Certification Coordinators now set consultation appointments and walk clients through the application and assist them in gathering the correct documents.

In spite of these efforts, firms continue to submit incomplete certification applications which can lead to a delay in the processing of the application while the Division awaits the submission of additional documents from the firm. To improve the number of complete initial submissions, the Division is in the process of revising the certification application. Division staff spoke with SBDC professionals who assist firms with applications, and also, conducted a survey of recently certified companies and companies whose files were closed due to incomplete applications. From these external inquiries and internal experience assisting clients, better-defined application instructions are being written. The Indianapolis Department of Administration has been collaborating on this project to ensure the continued success of the common certification application.

IDOA MWBE certifications continue to receive a determination within an average of 45 days from the day a completed application is submitted.

MONITORING PARTICIPATION

Between October of 2005 and March of 2006, the compliance team has audited over \$21.6 million in MBE and WBE subcontracts. These audits seek to determine if the prime contractor is meeting the level of MBE or WBE subcontracting agreed to in their contract. When shortfalls are identified, the Division works with the contractor to meet the level of M/WBE spend. There are acceptable occasions when the subcontractors submitted in the participation plan are not used, but other certified firms are subcontracted instead at the same level. To this point, all shortfalls that have been identified have been correct.

Over 100 procurement agents and attorneys from agencies throughout state government attended IDOA's full-day contract and procurement training session in February. During that event, the Division unveiled four changes to the procurement and contracting process to improve MWBE compliance:

1. A new Subcontractor Commitment Form replaced the old Participation Plan. The revised form gathers more specific information to be evaluated prior to award to ensure that the subcontractor is providing a commercially useful function. Additional information is also being gathered to assist with compliance audits. The new name for the form stresses to the prime contractor that the State expects that the MWBEs will be utilized.
2. A new MWBE boilerplate contract clause requires the inclusion of the names of the subcontractors, the amount of subcontracting and the approximate date of utilization of the subs. This will also facilitate audits and better impress upon primes the requirement that they meet their subcontracting commitment.
3. The responsibility for evaluating the MWBE participation on RFP responses has been transferred from the Procurement Division to the MWBE Division. The MWBE Division will more closely examine the role the subcontractor will fulfill to ensure that the firm is certified in the correct business line and that they will be providing a commercially useful function on the project.
4. The evaluation of RFP responses with regard to subcontractor utilization has been changed in response to suggestions from both prime contractors and certified MWBE firms. Prior to February, the 10 evaluation points for MBE utilization and the 10 evaluation points for WBE utilization were awarded to all firms that met the goals. This removed all incentive for firms to exceed the goals when it was possible, and it gave little incentive to firms to struggle to find participation short of the goal when full attainment was not possible. A new graduated award process will give the 10 points to the highest achievement in each category and then apportion points to each lesser proposal in proportion.

DATA COLLECTION CHALLENGES AND PARTICIPATION REPORTS

The enhancement of PeopleSoft to better capture subcontractor data is complete. Purchasing agents must now input certified M/WBE subcontractors as a part of the data entry process to create purchase orders. In the past, entry was optional and non-certified firms could be counted. Training on the new procedures is ongoing throughout the first quarter of 2006. Once complete, this data will be supplemented with prime contractor spend data extracted from the Auditor of State's warrant file.

IDOA has also engaged a contractor to develop a PeopleSoft enhancement to capture the MWBE data on contracts. This data has never been captured centrally or electronically in the past. The coming enhancements will allow public viewing of contract documents, statistical analysis of MWBE spend data and the collection of information needed to conduct more comprehensive MWBE compliance audits.

The Commission is directed by statute to complete a study of the current utilization of certified firms on state contracts and to assess the current disparity to the available capacity. Bucher and Christian, an Indiana-owned MBE, updated remains under contract to complete the project which is due in the spring of 2006.